

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

FILED

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CLERK
US BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

In re:

GREGORY CHARLES MITCHELL,

Debtor

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Case No. 19-14885-RGM
Chapter 7

**MOTION TO FILE AN AMENDED RESPONSE and MEMORANDUM OF LAW TO
DEBTOR'S MOTION FOR SANCTIONS BASED ON VIOLATION OF AUTOMATIC
STAY**

COMES NOW, COLLEEN J. MacALISTER, by and on behalf of herself, and pursuant to Fed. R. Civ. P. 7(b) and Local Rule 9013-1(H)(3)(a), and requests leave of the Court to file an amended response and supporting memorandum of law to Debtor's Motion for Sanctions, and in support thereof states as follows:

1. On October 8, 2009, Debtor, GREGORY CHARLES MITCHELL (MITCHELL) received a discharge from his debts, including debts to ARRON and CINDY RAISTRICK for \$26,689.00 and \$4,240.00.
2. On October 30, 2009, COLLEEN J. MacALISTER, (MacALISTER) received Notice that MITCHELL wanted to reopen his case to pursue sanctions against creditors that he believed took actions during the pendency of the bankruptcy proceedings that violated the automatic stay.
3. The Motion did not indicate which creditors MITCHELL believed violated the automatic stay. The Motion was accompanied by a Notice of Hearing on Motion to Reopen Case

that was set for November 17, 2009. On November 18, 2009, MacALISTER received an Amended Notice of Hearing for December 1, 2009.

4. On January 11, 2010, MacALISTER received a Notice of Hearing on Motion for Violation of Automatic Stay and a Motion for Sanctions Based on Automatic Stay, claiming that MacALISTER and her clients, RAISTRICKS violated the automatic stay by “continuing collection actions” after having received Notice of the bankruptcy filing.
5. The Hearing on the Motion was set for January 26, 2010, and required a response be filed with the Court at least five business days before the hearing.
6. On January 19, 2010, MacALISTER, a solo practitioner in civil and commercial litigation, sent a response to the Motion to the Court and counsel via FedEx, that raised certain equitable arguments, and asked the Court to continue the matter due to insufficient notice to make travel arrangements to Virginia.
7. The Hearing was rescheduled for February 9, 2010, and MacALISTER filed another Motion to Continue the Matter. In the motion, she asked the Court to consider certain equities in making a decision if the Court was not inclined to grant her request for another continuance.
8. After the Court graciously conferred via telephone with MacALISTER and counsel for MITCHELL on availability, the Hearing was set for April 14, 2010.
9. MacALISTER is not a bankruptcy lawyer, and admits to virtually no previous knowledge of the bankruptcy code, so she immediately began preparation for the April 14, 2010, hearing in order to determine if she needed to request any discovery. She has now reviewed considerable case law regarding violations of the automatic stay, and has

determined that she is entitled to raise numerous legal defenses to MITCHELL'S claims, including the claim for violations, the request for sanctions and punitive damages, and the discharge of the debts, and she is entitled to seek certain remedies from the Court.

10. MacALISTER moves the Court now to file an legally sufficient Amended Response and Memorandum of Law, that raises certain legal arguments and defenses to MITCHELL'S claims, and cites properly to the case law.
11. Such an Amended Response will not be close in time to the date of the hearing, so it will not prejudice MITCHELL'S preparation, and indeed should serve the further purpose of avoiding surprise at the hearing. In addition, filing an Amended Response and supporting Memorandum of Law in advance of the hearing with the Court, that includes legal argument, and citations to case law and references to Exhibits can only further judicial economy.
12. This Motion is made in good faith and not for the purpose of delay in these proceedings.

WHEREFORE, COLLEEN J. MacALISTER, respectfully asks the Court to grant her leave to file an Amended Response to Debtor's Request for Sanctions and supporting Memorandum of Law, with such Response to be filed no later than ten (10) days after the Court enters an Order granting the Motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished via US Mail to: Mr. James W. Reynolds, ODIN FELDMAN & PITTLEMAN, PC, 9302 Lee Highway, Suite 1100, Fairfax, Virginia 22031 on this 24th day of February, 2010.

COLLEEN J. MacALISTER, Esq.

here, on her own behalf, and not as counsel

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